

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

v.

23-02935-CF

KOSOWSKI, TOMASZ
_____ /

**AMENDED MOTION TO QUASH AND FOR A PROTECTIVE ORDER
FOR ASSOCIATE COUNSEL OLIVIER LINDEMANN**

Attorney OLIVIER LINDEMANN, by and through undersigned counsel, hereby moves this Honorable Court for a protective order that testimony sought by the Defendant from Olivier Lindemann (“Lindemann”) not be had. In support of this motion and the relief requested, Olivier Lindemann states as follows:

1. Olivier Lindemann (hereinafter “Lindemann”) is an Associate Counsel working in the General Counsel’s Office of the Pinellas County Sheriff’s Office.

2. As part of his duties, Attorney Lindemann is tasked with representing the Pinellas County Sheriff’s Office and other law enforcement agencies in Risk Protection Orders (“RPO’s”) brought in Pinellas County.

3. Attorney Lindemann is not a sworn or certified law enforcement officer and is not a Pinellas County Sheriff’s Deputy.

4. Attorney Lindemann’s duties do not include conducting criminal investigations into the citizens of Pinellas County.

5. The Defendant, Tomasz Kosowski, is currently incarcerated at the Pinellas County Jail under case 23-02935-CF, wherein the Defendant is charged with one count of First-Degree Murder.

6. The Defendant was arrested in the above-styled case on March 26, 2023.
7. A temporary RPO was entered against the Defendant on March 28, 2023; with a final hearing calendared for April 5, 2023, under case 23-003300-IN.
8. A Joint Motion and Stipulation for Entry of Final RPO¹ was filed and entered on April 5, 2023, negating the need for a final evidentiary hearing to take place.
9. The stipulation to the final RPO was signed by Attorney Lindemann and Counsel for Defendant, Mr. Brunvand.
10. No hearing or live testimony was given to the court for the entry of the Final RPO in case 23-003300-IN.
11. The RPO against the Defendant expired on April 6, 2024.
12. As of the filing of this motion, there is no active RPO against the Defendant.
13. On or about December 30, 2024, Attorney Lindemann was contacted by Counsel for the Defendant wishing to set Attorney Lindemann for a deposition in the criminal case, 23-02935-CF.
14. At that time, Counsel for the Defendant explained that the testimony sought from Attorney Lindemann would be about the RPO process in general as well as how an RPO came to be against the Defendant in case 23-003300-IN.
15. The undersigned Counsel for Attorney Lindemann contacted Counsel for Defendant and explained that we would object to any testimony by Attorney Lindemann in the criminal case for the arguments set out below. Counsel for Defendant agreed to release Attorney Lindemann and not schedule his deposition at that time.

¹ Counsel requests this court take judicial notice of the court filings in Pinellas County case 23-003300-IN, in which the motion and stipulation for entry of final RPO is docketed on April 5, 2023.

16. On February 25, 2025, Counsel for Attorney Lindemann received a copy of Defendant's Reciprocal Witness list² filed the same day, listing Attorney Lindemann³ as a defense witness and Counsel requested that Attorney Lindemann be scheduled for a deposition on or about March 11, 2025.

17. A search of the docket in case 23-02935-CF also shows a Notice of Taking Deposition⁴ filed by Counsel for the Defendant and listing Attorney Lindemann as a deponent at 3:45pm on March 11, 2025 (via Zoom).

18. On March 4, 2025, Attorney Lindemann was served a subpoena for the March 11, 2025, deposition via below-signed counsel.

19. For the reasons set out below, any testimony by Attorney Lindemann would be inappropriate and inadmissible. As such, a protective order is not only appropriate but required.

MEMORANDUM OF LAW

In all criminal prosecutions, the accused has the right to have compulsory process for obtaining witnesses. FLA. CONST. art. I, § 16(a). However, that right is not unlimited.

I. THE TESTIMONY SOUGHT BY DEFENDANT IS TANTAMOUNT TO EXPERT TESTIMONY AND AS SUCH THE OPINIONS ARE INADMISSIBLE.

As mentioned above, Counsel for the Defendant are seeking to have Attorney Lindemann testify about the RPO process in general—a legal process directed under Florida Statute §790.401—as well as how a RPO came to be against the Defendant. RPO's are not part of a criminal prosecution and are by nature a civil legal process.

² Docketed February 25, 2025, in the above-styled cause.

³ On the witness list Attorney Lindemann is referred to as "Oliver". It should be noted Attorney Lindemann's first name is Olivier.

⁴ Docketed February 26, 2025, in the above-styled cause.

To have Attorney Lindemann testify as to the legal process of an RPO would be considered expert testimony. The testimony sought is unrelated to the criminal charge brought against the Defendant and, if allowed, would be an abuse of the trial court's discretion. "To be admissible, expert testimony must concern a subject which is beyond the common understanding of the average juror and is such that it will aid the trier of fact in their search for truth." Florida Power Corp. v. Barron, 481 So.2d 1309, 1310 (Fla. 2nd DCA 1986). Specifically, testimony or opinion on whether an accused is guilty or innocent is prohibited. Martinez v. State, 761 So.2d 1074 (Fla. 2000). While Attorney Lindemann is not expected to opine on the guilt of the Defendant, the only logical reasoning of the Defendant's request is to seek the opinion of Attorney Lindemann as to the Defendant's standing as a danger to himself or others as is contemplated by Florida Statute §790.401. Additionally, appellate courts have previously ruled that expert witnesses are not permitted to render an opinion that applies a legal standard to a set of facts and specifically states "[i]f a witness' conclusion tells the trier of fact how to decide the case, and does not assist in determining what has occurred, then it is inadmissible." Town of Palm Beach v. Palm Beach County, 460 So.2d 879, 882 (Fla. 1984). Such is exactly what is being requested by the Defendant of Attorney Lindemann when asked to apply a set of facts to the legal standard and process of an RPO, none of which would assist the jury in determining what occurred in the allegations against the Defendant.

Any argument that Attorney Lindemann would not be giving expert testimony, but lay witness testimony also fails to overcome the present necessity of an order for protection. Lay witnesses would not be permitted to testify to legal processes and standards as such knowledge and understanding requires particular training and knowledge.

II. THE TESTIMONY SOUGHT IS INADMISSIBLE AS ATTORNEY LINDEMANN IS NOT A FACT WITNESS.

Attorney Lindemann, as stated above, is not a certified law enforcement officer. Attorney Lindemann is a licensed attorney within the State of Florida and works in a civilian capacity for the Pinellas County Sheriff's Office. At no point during the pendency of this case did Attorney Lindemann assist in the investigation, arrest, or prosecution of the Defendant. He does not have any first-hand knowledge of any facts relevant or material not only to the Defendant's murder case, but the RPO that the Defendant and his lawyer agreed to.

Pursuant to the Rules of Evidence and longstanding holdings of the Florida Supreme Court, Attorney Lindemann's lack of personal knowledge about any facts material to this case renders his testimony inadmissible. Fla. R. Evid. §90.604. See also Hayward v. State, 183 So.3d 286, 317 (Fla. 2015) ("Section 90.604 . . . provides that a witness may not testify to a matter unless sufficient evidence . . . is introduced to support a finding that the witness has personal knowledge of the matter."); Kennard v. State, 42 Fla. 581, 583 (Fla. 1900) (stating a witness must depose to facts within his knowledge, and cannot testify to mere matters of conjecture.).

Specifically, as in this case, "[w]here a witness has no personal knowledge of a matter, and the witness's knowledge is derived entirely from information given by another, the witness's testimony is incompetent and inadmissible as hearsay." Bryant v. State, 124 So.3d 1012, 1015 (Fla. 4th DCA 2013) (emphasis added). Any 'knowledge' of the above-styled case that Attorney Lindemann may have would be wholly based on information relayed to him by the law enforcement officer who initiated the RPO, contained in the offense report, law enforcement officer affidavit, or in any exhibits (such as witness statements, 911 calls, or body-worn camera footage) submitted by the initiating law enforcement officer.

As the Defendant, nor in fact any party of the criminal case, does not claim that Attorney Lindemann is a fact witness in the above-styled cause, Attorney Lindemann would be a non-witness, and a court is obligated to quash subpoenas for non-witnesses. State v. Domenech, 533 So. 2d 896, 896 (Fla. 3rd DCA 1988) (per curiam) (“Subpoenas issued at behest of defendants should have been quashed when witness’ supposed testimony was affirmatively shown to bear no legal pertinence whatever to issues in case, so it could not be of any potential assistance in legitimate defense of pending charges.”); Young v. Metropolitan Dade County, 201 So.2d 594, 596 (Fla. 3rd DCA 1967) (non-treating physician could not be required to render expert testimony where he “had absolutely no knowledge of the facts; had not agreed to render expert testimony... and had never examined or treated” the patient.); Kridos v. Vinskus, 483 So.2d 727, 731 (Fla. 4th DCA 1985) (detective subpoenaed to testify as an expert “may not willy nilly be compelled to testify purely because he is an expert, but only because he has information bearing directly on the case.”).

It is undisputed that Attorney Lindemann did not investigate this case. This can also be seen by the fact that Attorney Lindemann is not listed by the State in the above-styled cause. Had Attorney Lindemann been listed by the State, to comply with FL. R. Crim. P. 3.220(b)(1)(a), the state would have had to categorize Attorney Lindemann’s testimony into Category A, B, or C.

Category A witnesses include (1) eye witnesses, (2) alibi witnesses and rebuttal to alibi witnesses, (3) witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or codefendant, which shall be separately identified within this category, (4) investigating officers, (5) witnesses known by the prosecutor to have any material information that tends to negate the guilt of the defendant as to any offense charged, (6) child hearsay witnesses, (7) expert witnesses who have not provided a written report and s curriculum

vitae or who are going to testify, and (8) informant witnesses, whether in custody, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried. FL. R. Crim. P. 3.220(b)(1)(A)(i).

It would be hard for anyone to dispute the Attorney Lindemann is most obviously not someone who could be considered a Category A witness in the case against the Defendant.

Jumping to Category C, these witnesses include all who performed only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense. FL. R. Crim. P. 3.220(b)(1)(A)(iii).

Similarly, it should be undisputed that Attorney Lindemann is not a Category C witness against the Defendant as Attorney Lindemann had zero involvement in the criminal investigation and prosecution against the Defendant.

Finally, Category B witnesses are all witnesses not listed under Category A or C. FL. R. Crim. P. 3.220(b)(1)(A)(ii). For the sake of arguing that Attorney Lindemann would be considered a Category B witness, FL. R. Crim. P. 3.220(h)(1)(B) governs when their depositions may be taken by mandating that “no party may take the deposition of a witness listed by the prosecutor as a Category B witness except upon leave of the court with good cause shown. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexities of the issues involved, the complexity of the testimony of the witness (e.g., experts), and the other opportunities available to the defendant to discover the information sought by the deposition.”

In this case, any information held by Attorney Lindemann would have been told to him by the very witnesses listed on the State's witness list as Category A witnesses, all of whom the Defendant has a right to depose.⁵

WHEREFORE, for the reasons stated above, counsel respectfully requests the Court quash the March 4, 2025, subpoena and enter a protective order prohibiting the testimony sought from Attorney Lindemann from being had.

Respectfully submitted,

/s/ Emily K. VanOosting
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CERTIFICATE OF SERVICE

I certify that on March 5, 2025, I electronically filed the foregoing with the Clerk of the Court through the Florida Courts E-Filing Portal and which will send notice of electronic filing to State Attorney's Office, 14250 49th Street North, Clearwater, FL 33762, at SA6eservice@co.pinellas.fl.us, and Bjorn Brunvand, Counsel for the Defendant, 615 Turner Street, Clearwater, FL 33756, at bjorn@acquitter.com.

⁵ Counsel, in fact, suspects that most, if not all these Category A witnesses have already been deposed by the Defense.